PTO/SB/33 (07-05)
United States Patent & Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 059643.00365
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed Name _____	Application Number: 10/786,537 Filed: February 26, 2004 First Named Inventor: Jeroen WIGARD Art Unit: 2617 Examiner: D.D. HERRERA

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ Applicant/Inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed

☒ Attorney or agent of record.
Registration No. 43,828

☐ Attorney or agent acting under 37 CFR 1.34.
Reg. No. is acting under 37 CFR 1.34 _____

Arlene P. Neal
Signature

Arlene P. Neal
Typed or printed name

703-720-7897
Telephone number

May 30, 2007
Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Jeroen WIGARD et al. Art Unit: 2617

Application No.: 10/786,537 Examiner: D.D. HERRERA

Filed: February 26, 2004 Attorney Dkt. No.: 059643.00365

For: METHOD AND CONTROLLER FOR CONTROLLING A CONNECTION

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450 May 30, 2007

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicants hereby submit this Pre-Appeal Brief Request for Review of the final rejections of claims 1-15 and 17-41 in the above identified application. Claims 1-15 and 17-41 were finally rejected in the Office Action dated November 30, 2006. Applicants filed a Response to the Final Office Action on March 30, 2007, and the Office issued an Advisory Action dated May 4, 2007 maintaining the final rejections of claims 1-15 and 17-41. Applicants hereby appeal these rejections and submit this Pre-Appeal Brief Request for Review. Applicants hereby appeal these rejections and submit this Pre-Appeal Brief Request for Review. A Notice of Appeal is filed timely concurrently herewith, and therefore this Pre-Appeal Brief Request for Review is being timely filed. As will be discussed below, numerous clear errors exist in the final rejections that require withdrawal thereof.

Claims 1-18, 30-31, 34 and 35-37 were rejected under 35 U.S.C. 102(b) as being anticipated by IEEE document XP010642591 to Cheung. As outlined below, Cheung fails to disclose or suggest the elements of claims 1-18, 30-31, 34 and 35-37. The failure of Cheung to disclose each and every element of the present claims constitutes clear error.

Cheung describes a method of optimizing the use of bandwidth for a stream of data. Excess bandwidth in a non-limiting link is utilized to provide error correction in that link in order to increase the overall Quality of Service (QoS). In the method described by Cheung, the streamed data is transmitted at the maximum rate supported by both links. Normally, one link has a higher bandwidth capability and this excess bandwidth may be unused. Cheung teaches determining which link is limiting. If the wireless link is found to be limiting, a server transmits the data, along with FEC codes to allow for wireless losses, at the maximum rate of the wireless network. Excess bandwidth in the wired network is used to resend lost packets to improve the overall QoS. If it is found that the wired network is limiting, the server transmits the data at the maximum rate of the wired network without including any FEC codes, these codes are then added at the wired/wireless junction to allow for losses in the wireless network.

Applicants submit that the rejection of claims 1-30 under 35 U.S.C. 102(b) based on the teachings of Cheung is clearly erroneous. Applicants submit that Cheung does not teach or suggest each element of claims 1, 18, 30, 31, 36 and 37. As previously noted, each of independent claims 1, 18, 30, 31, 36 and 37 recites, in part, changing one or more parameters relating to at least one of the links to change the capacity of at least one of the links, whereby the average power per bit in the radio link is changed. Cheung only considers the situation when a single stream of data is transmitted with a mismatch of available bandwidth in the two links.

In the method described by Cheung, in each case, the data transmitted on the wireless network includes a layer of FEC to combat wireless loss. The FEC bits, disclosed in Cheung, may originate at the server if the wireless network is limiting or at the wired/wireless link if the wired network is limiting. Therefore, in Cheung, the ratio of transmitted bits to data bits in the wireless network, and the power per data bit in the absence of any other feature affecting the transmit power, is the same in both cases. Thus, Cheung does not teach or suggest changing one or more parameters relating to at least one of the links to change the capacity of at least one of the links, whereby the average power per bit in the radio link is changed, as recited in claims 1, 18, 30, 31, 36 and 37. Given the explanations above, Applicant respectfully asserts that the

rejections under 35 U.S.C. §102(b) are in clear error and that the rejections should be withdrawn because Cheung fails to teach or suggest each feature of claims 1, 18, 30, 31, 36 and 37 and hence, dependent claims 2-17, 34, and 35 thereon at least for their dependence on claims 1, 18, 30, 31, 36 and 37 in addition to the additional limitations recited in each of claims 2-17, 34, and 35.

Claims 19-29 and 32-33 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Publication No. 20020146024 to Harris. As outlined below, Harris fails to disclose or suggest the elements of claims 19-29 and 32-33. The failure of Harris to disclose each and every element of the present claims constitutes clear error.

Harris describes a method of optimizing a transmission rate for a data stream in a wireless network to match an unknown bottleneck bandwidth located in a wired network. The described method monitors the length of the transmission queue for the wireless network increasing the transmission rate of the wireless network if queue size increases beyond an upper threshold value and decreasing transmission rate if the queue size decreases below a lower threshold. In this way, the allocated bandwidth in the wireless network is altered until it matches the bottleneck bandwidth which is assumed to be in the wired network. The case in which the wireless network limits available bit rate is not considered.

Applicants submit that the rejection of claims 19-29 and 32-33under 35 U.S.C. 102(b) based on the teachings of Harris is clearly erroneous. Applicants submit that Harris does not teach or suggest each element of claims 19-29 and 32-33. Each of independent claims 19, 29 and 32-33 recites, in part, determining that resources are available in both the first and the second links and using the selected bit rate in the connection. Harris does not disclose determining if resources are available for a certain bit rate in both networks as required by claims 19, 29 and 32-33 but rather chooses a bit rate for the wireless network to match an unchangeable bit rate in the wired network.

The method of Harris relates only to a data stream transmitted from the wired network to the wireless device, and is only applicable to the case where the wired network, or computer infrastructure, limits the data rate of the data stream. There is no suggestion of "for a plurality of bit rates determining if resources are available in both said first and second links for a given bit rate" as recited in claims 19, 29 and 32-33. Rather, in Harris, it is assumed that the wired network is operating at its maximum bit rate in carrying the data stream, and that the wireless network is capable of a higher bit rate than the wired network. Indeed, there is no teaching or suggestion in Harris of determining the available bit rate in either of the links as it is simply assumed by the method of Harris that the bottleneck will lie in the wired part and that the wireless link can be set to any required bandwidth as required by the disclosed algorithm.

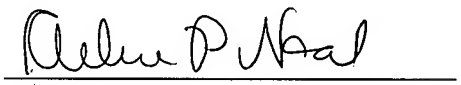
The above described deficiencies in the method of Harris mean that the usefulness of the method is restricted to the limited case of a data stream being transmitted from the wired part to the wireless part with the data speed bottleneck located in the wired part of the network. In contrast, embodiments of the present invention are applicable to the more general case of data flowing in either direction and with the bottleneck lying in either part of the network. This is achieved through the feature of 'for a plurality of bit rates determining if resources are available in both said first and second links for a given bit rate'. As discussed above, there is no suggestion of this feature in Harris. Given the explanations above, Applicant respectfully asserts that the rejections under 35 U.S.C. §102(b) are in clear error and that the rejections should be withdrawn because Harris fails to teach or suggest each feature of claims 19, 29 and 32-33 and hence, dependent claims 20-28 thereon at least for their dependence on claims 19, 29 and 32-33 in addition to the additional limitations recited in each of claims 20-28 .

For all of the above noted reasons, it is strongly submitted that certain clear differences exist between the present invention as claimed in claims 1-15 and 17-41 and the prior art relied upon by the Examiner. It is further submitted that these differences are more than sufficient that the present invention would not have been anticipated or obvious to a person having ordinary skill in the art at the time the invention was made. This final rejection being in clear error,

therefore, it is respectfully requested that the Examiner's decision be reversed in this case regarding the rejection of claims 1-15 and 17-41, and indicate the allowability of all of pending claims 1-15 and 17-41.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



Arlene P. Neal
Registration No. 43,828

Customer No. 32294
SQUIRE, SANDERS & DEMPSEY LLP
14TH Floor
8000 Towers Crescent Drive
Tysons Corner, Virginia 22182-2700
Telephone: 703-720-7800
Fax: 703-720-7802
APN:ksh

Enclosures: PTO/SB/33 Form
Notice of Appeal
Petition for Extension of Time
Check No. 16434